

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JOSEPH N. BASILE, OFFICER OF	:	DETERMINATION
WALT'S SUBMARINE SANDWICHES, INC.	:	DTA NO. 808811
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period December 1, 1986	:	
through February 29, 1988.	:	

Petitioner, Joseph N. Basile, officer of Walt's Submarine Sandwiches, Inc. (hereinafter "Walt's Sandwiches"), 67 Mordella Road, Albany, New York 12205, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1986 through February 29, 1988.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on April 30, 1991 at 9:15 A.M., with all briefs to be submitted by July 26, 1991. The Division of Taxation's brief was filed on June 19, 1991, and petitioner's on July 16, 1991. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Donald C. DeWitt, Esq., of counsel).

ISSUES

I. Whether the Division of Taxation correctly concluded that Walt's Sandwiches had insufficient records for the audit period, thereby justifying the imposition of sales tax on the excess of sales reported on Federal tax returns less sales reported by Walt's Sandwiches on its sales tax returns.

II. Whether the Division of Taxation properly disallowed certain tax-exempt sales claimed by Walt's Sandwiches based upon the company's failure to substantiate their tax-exempt status.

III. Whether petitioner should be bound by the results of the audit when he was not contacted

by the auditor during the course of the audit.

IV. Whether petitioner is personally liable for sales tax determined due from Walt's Sandwiches for the period December 1, 1986 through February 29, 1988 as a person required to collect tax under Tax Law § 1131(1), and, if so, whether penalty and that portion of interest exceeding the minimum interest should be cancelled.

FINDINGS OF FACT

The Division of Taxation issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated September 11, 1990 against petitioner, Joseph N. Basile, as officer¹ of Walt's Sandwiches, assessing sales tax (plus penalty and interest) for the following five sales tax quarters:

<u>Quarter (Period) Ending</u>	<u>Tax Assessed</u>
February 28, 1987	\$1,507.82
May 31, 1987	2,447.65
August 31, 1987	2,236.58
November 30, 1987	1,774.44
February 29, 1988	<u>1,782.97</u>
Total	<u>\$9,749.46</u>

On the notice, under the subheading "Explanation", was a checked box next to the following statement printed in bold type:

"The tax assessed has been estimated in accordance with the provisions of section 1138(a)(1) of the Tax Law. If the box above is checked see additional information on back of this notice."

The following explanation of "audit methods for estimated taxes" was on the back of the notice:

"Section 1138(a)(1) of the Tax Law provides that if necessary, the tax due may be estimated on the basis of external indices, such as stock on hand, purchases, rental paid, number of rooms, location, scale of rents or charges, comparable rents or charges, type of accommodations and service, number of employees or other factors."

During the period at issue, Walt's Sandwiches operated several submarine sandwich shops, known as Big Dom's, in the Albany area. In the late 1960's, Walter Austin had started

¹The notice noted that petitioner was "liable individually and as an [sic] pres. of Walt's Submarine Sandwiches Inc. under Sections 1131(1) and 1133 of the Tax Law...."

Walt's Sandwiches. According to petitioner's testimony, his brother, Dominic Basile, joined Walter Austin in the business, and a year later, in 1968,² Dominic Basile asked petitioner to come into the business with him:

"I [petitioner Joseph Basile] came into the business with him [brother Dominic Basile] with \$6,000 and we bought Walt Austin's shares out. Dominic retained his initial shares plus half of Walt Austin's shares. I got the other half of Walt Austin's shares."

United States corporation income tax returns for Walt's Sandwiches for 1987 and 1988 show Dominic Basile as owner of 67.5% of the corporation's stock and petitioner owning 32.5%.

The Audit of Walt's Sandwiches

The audit, which took 86.25 hours, covered the period December 1, 1986 through February 28, 1990, including the shorter period involved

herein of December 1, 1986 through February 29, 1988. The Division of Taxation has not asserted that petitioner is personally liable for sales tax determined due from Walt's Sandwiches for the eight sales tax quarters included in the period March 1, 1988 through February 28, 1990, but only for sales tax determined due for the five sales tax quarters included in the period December 1, 1986 through February 29, 1988, as detailed in Finding of Fact "1", supra.³

A summary schedule of additional tax due, by sales tax quarter, which is included in the auditor's workpapers, shows the following for the period at issue herein:

Quarter Ended	Total Additional Tax Due on <u>Sales</u>	Total Additional Tax Due on <u>Capital</u>	Total Additional Tax Due on <u>Expenses</u>	Total Additional Tax Due
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²The audit report completed in 1990 noted that Walt's Sandwiches had been in business for 21 years, which would mean it commenced business in 1969. This minor variance in dates is unexplained.

³A notice of determination dated September 11, 1990 was issued against Walt's Sandwiches for the entire period consisting of the 13 sales tax quarters. However, the corporation is in bankruptcy proceedings, and it does not appear that the Division of Taxation has pursued the corporation. A notice of determination dated September 11, 1990 was issued against petitioner's brother, Dominic Basile, for the eight sales tax quarter included in the period March 1, 1988 through February 28, 1990.

2/28/87	\$1,384.00	\$ 58.80	\$ 65.02	\$1,507.82
5/31/87	2,329.00	88.20	30.45	2,447.65
8/31/87	1,969.00	29.40	238.18	2,236.58
11/30/87	1,427.00	251.16	96.28	1,774.44
2/29/88	1,634.00	--	148.97	<u>1,782.97</u>
Total				\$9,749.46

The auditor's initial appointment letter, dated February 6, 1990, to Walt's Sandwiches at its corporate address scheduled a field audit and set an appointment date of March 1, 1990. The following corporate records were requested:

"All books and records pertaining to your Sales and Use Tax liability for the period under audit [12/1/86 to 11/30/89 according to this letter] are to be available on the appointment

date. This would include journals, ledgers, sales invoices, purchase invoices, cash register tapes, federal income tax returns, and exemption certificates."

According to the auditor's log, the appointment date of March 1, 1990 was postponed at the corporation's request because "their bookeeper [sic] just left them". As a result, a second appointment letter dated April 4, 1990 was sent to the corporation scheduling the commencement of the field audit for April 24, 1990. The request for records, as detailed above, was made again. The audit report discloses that the following records were made available for the entire audit period: sales tax returns, Federal and State income tax returns, sales journal, cash receipts journal, check disbursements journal, general ledger, and monthly bank statements. However, cash register tapes were not made available, and only some exemption certificates were produced.

The field audit report summarized the auditor's findings covering the 13 sales tax quarters (the longer period of December 1, 1986 through February 28, 1990) as follows:

	<u>Reported</u>	<u>After Audit</u>
Gross sales	\$5,971,291	\$6,067,529
Taxable sales	5,746,252	5,940,057
Purchases subject to use tax	-0-	26,263

The audit report noted that "gross sales per records were not found to be in substantial agreement with sales reported per FITR [Federal income tax returns] and sales tax returns" (emphasis added). Gross sales from the home office were not included on the sales tax returns.

As a result, greater gross sales of \$28,226.00 were reported on the 1987 Federal return, of \$42,904.00 on the 1988 Federal return, and of \$20,089.00 on the 1989 Federal return. The auditor used this variance to increase the corporation's gross sales per quarter as follows:

Year

1987	Federal gross sales	\$2,019,750
	Gross sales per sales tax returns	<u>1,991,524</u>
	Difference	\$ 28,226

4 quarters per year therefore \$28,226 divided by 4 = \$7,056
Additional gross sales for 1987 per quarter \$7,056

1988	Federal gross sales	\$1,826,761
	Gross sales per sales tax returns	<u>1,783,857</u>
	Difference	\$ 42,904

4 quarters per year therefore \$42,904 divided by 4 = \$10,726
Additional gross sales for 1988 per quarter \$10,726

A similar calculation was done for 1989 which resulted in additional gross sales for 1989 of \$20,089.00, or \$5,022.00 per quarter. (\$5,022.00 was also used as an estimate for the one quarter ending February 28, 1990, which was included in the longer audit period.)⁴

The auditor also increased Walt's Sandwiches' sales subject to sales tax for exempt sales which the corporation could not substantiate. Four pages of schedules included in the auditor's workpapers show substantiated exempt sales for the audit period of 13 sales tax quarters. The total amount of these invoices, which were substantiated as tax exempt, is \$18,671.45. \$9,923.00 of this total amount were apparently tax-exempt sales shown on invoices with dates during the period at issue.

A schedule included in the auditor's workpapers showing how the auditor computed the amounts per quarter for total additional tax due on

⁴As noted in Finding of Fact "5", supra, the auditor determined gross sales of \$6,067,529.00 after audit. The difference between such audited gross sales and reported gross sales of \$5,971,291.00 is \$96,238.00. The detailed analysis of the auditor's calculation noted above totals \$96,241.00. The \$3.00 discrepancy was unexplained.

sales, as noted in Finding of Fact "4", supra, is shown in Appendix A attached hereto.

Of the remaining sales tax assessed against petitioner of \$1,006.46 (\$9,749.46 less \$8,743.00), \$427.56 was additional tax due on purchases of assets and \$578.90 additional tax due on recurring expenses. The auditor's workpapers include schedules which detail the asset purchases (including equipment purchases) and recurring expenses (including rubbish and snow removal) which the auditor determined were subject to tax.

Petitioner's Changing Role in Walt's Sandwiches

As noted in Finding of Fact "2", supra, in the late 1960's, petitioner joined his brother, Dominic Basile, in the ownership and operation of Walt's Sandwiches. Petitioner testified that in the succeeding years he helped build up Walt's Sandwiches from a two-store chain to nine stores. According to petitioner's testimony, conflict with his brother "came to a head" in October 1986 when his brother removed⁵ petitioner as president of the corporation. Petitioner testified he did not know what brought the conflict "to a head". However, it seems clear that petitioner's conflict with his brother became heightened at or near the time his brother hired Norman Tillman as an advertising director and subsequently expanded Mr. Tillman's role in the business operations. Petitioner testified that he

"turned him [Norman Tillman] down three times". Nonetheless, he came to the office one day and "was told that Norman Tillman was hired by [his] brother". At the time of the audit herein, February to September 1990, Norman Tillman, as general manager of Walt's Sandwiches, assisted in the audit. Petitioner, who was no longer involved in the business, was not contacted by the auditor during the audit for his assistance or for any information he might have

⁵Petitioner introduced into evidence a letter dated October 15, 1986 of attorney Walter J. Breakell III who was a member of the board of directors of Walt's Sandwiches. Mr. Breakell wrote to Dominic Basile advising him that he was "giving serious consideration to tendering [his] resignation" because of Dominic Basile's removal of petitioner as president. It appears that Dominic Basile's decision to remove petitioner as president was retracted perhaps in response to this letter, or, at the least, was ignored by petitioner.

concerning the business. From October 1986 until early 1988, when petitioner was, in his words, "physically taken out of the [corporate] office", petitioner's business relationship with his brother was far from tranquil:

"The fact that he [Dominic Basile] told me that I was no longer president I did not accept immediately. The reason why there are still items⁶ with my signature on it was because

I bit and clawed and scratched in order to keep my position as president. This was not successful on my part and I was physically removed from the office, from the premises under threat of being arrested...somewhere in December or January of '88."

Petitioner's testimony is that, although he remained with the corporation from October 1986, when his brother "fired" him as president, until his physical removal from the corporate

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The Division of Taxation introduced into evidence photocopies of the bottom halves of eight sales tax returns filed by Walt's Sandwiches for the months of December 1986, January 1987, February 1987, March 1987, April 1987, May 1987, June 1987, and August 1987, only. These returns showed the following taxable sales, respectively: \$184,434.00; \$129,046.43; \$438,202.00; \$141,171.79; \$178,387.00; \$481,950.00; \$165,012.00; and \$512,402.00. The amounts shown on the returns filed for February 1987, May 1987 and August 1987 would appear to be totals for the three-month sales tax quarters ending on the last day of such months. None of these returns appear to have been signed. At least the photocopies in evidence do not contain signatures. However, some of the photocopies of checks on the business checking account of "Big Dom's, Division of Walt's Submarine Sandwich, Inc.", which were apparently remitted with the tax returns, show either petitioner's signature or his signature stamp as follows:

<u>Date of Check</u>	<u>Signature or Signature Stamp</u>
January 20, 1987	signature
February 20, 1987	signature
March 19, 1987	signature stamp
April 17, 1987	signature stamp
May 19, 1987	signature stamp
June 19, 1987	signature stamp
July 17, 1987	signature
September 18, 1987	signature

The "items" referred to above are these checks with either petitioner's signature or his signature stamp.

offices in January 1988, he was only a "figurehead":

"[T]he employees in the office were told not to pay any attention to me; what I had to say was not the final word. The final word was Norman Tillman and Dominic Basile."

Petitioner's testimony that after October 1986 he did not have a corporate title conflicts with his letter dated March 31, 1987 to the Taxpayer Assistance Bureau of the Division of Taxation which the Division introduced into evidence. This letter, which advised the Taxpayer Assistance Bureau that Walt's Sandwiches closed its Troy, New York store effective March 1, 1987, was signed by petitioner as president. Further, the Federal income tax returns of Walt's Sandwiches for 1987 and 1988 list petitioner as an officer with the corporation at a salary for the respective years of \$33,125.00 and \$13,750.00.

In April 1988, a couple of months after his physical removal from the corporate premises, petitioner sued his brother and the corporation for "either dissolution of the corporation or to force him [Dominic Basile] to buy my shares."

Petitioner described his duties during the period October 1986 to January 1988, in response to questioning by the Administrative Law Judge, as follows:

"ALJ: Now, what were your duties with regard to the running of the Walt Submarine Sandwiches after you were fired, as you say, as president, until you were physically removed in January of 1988?

JOSEPH BASILE: Just basically I went around and examined the stores, made sure the help was straightened out. Things that I did previous to that were taken away from me.

ALJ: You say you went around and examined the nine stores?

JOSEPH BASILE: Yes.

ALJ: So what would your average day be like? You would come into the corporate headquarters on Exchange Street. What did you do?

JOSEPH BASILE: I usually picked up the deposits from each store in the morning -- or four or five stores, brought them to the office, and previous to October of '86 I would would [sic] over the paperwork for a couple of hours and then go out on the circuit. After October '86 I was anxious to get out of the office and out on the circuit because of the climate.

ALJ: So you would pick up the receipts from some of the stores on a daily

basis?

JOSEPH BASILE: Yes.

ALJ: And bring it to the office?

JOSEPH BASILE: Put it all together and make a deposit out.

* * *

ALJ: So after you would bring the receipts from four or five stores on a daily basis you would then head out again and visit the stores?

JOSEPH BASILE: And make sure employees had hats on, proper uniforms, stores were clean, windows clean, general housekeeping- type things."

Later in the hearing, the following testimony was elicited with regard to petitioner's signing of checks on behalf of Walt's Sandwiches during the period at issue:

"ALJ: [I]ncluded in Exhibit F, are these photocopies of checks and payments of certain sales tax amounts due and some of these checks have dates such as January 1987 where you have signed, February 1987, now March 1987. Is that your signature?

JOSEPH BASILE: It's a stamp.

ALJ: Did you authorize that this stamp be used on these checks?

JOSEPH BASILE: No, I did not. I tried to get that stamp back and I still don't have it. It's still in the office.

ALJ: When did you try to get that stamp back?

JOSEPH BASILE: Around that same period of time. I knew that they were stamping my signature on items, a number of checks were stamped.

ALJ: April of 1987 it seems to be stamped, and you are saying that you did not authorize the use of this stamp for this. Is that what you are saying?

JOSEPH BASILE: Exactly.

ALJ: And May of 1987 has a stamp; June of 1987?

JOSEPH BASILE: Correct.

ALJ: Is that your signature on the July 1987 check?

JOSEPH BASILE: Yes, sir. Perhaps they were on vacation. There were times when no one else was available that I signed the checks.

ALJ: In September of 1987?

JOSEPH BASILE: I think that was the last one."

The narrative portion of the audit report concludes with the following so-called "vendors reaction":

"Vendor was cooperative.... The general manager [Norman Tillman] agrees with the asset and expense results but not sales. Sales were not agreed because the general manager believes milk should be exempt and that he also sells bulk meats which he is unable to prove...."

SUMMARY OF THE PARTIES' POSITIONS

In his petition, Joseph Basile alleged that, since January 1987, he has "not been responsible for any actions by [Walt's Sandwiches]." His responsibility "for tax payments" was "turned over to the [sic] Norman Tillman, Exec. Vice Pres. of [Walt's Sandwiches]." Petitioner also alleged in his petition as follows:

"Since I was not allowed on the office premises, nor was I privy to any company information or files, it would be physically impossible for me to be involved in any way, shape or form."

In his closing argument, petitioner modulated his argument that he was not allowed on the office premises:

"The fact that I hung onto being president for a period of time was a personal choice of something that I was trying to do. I wasn't successful, but technically I was not president of the corporation and I was removed by the then president."

In his letter brief submitted after the hearing, petitioner challenged the auditor's methodology in determining sales tax due. In particular, petitioner asserts that the Division of Taxation failed to first request and thoroughly examine the records for the entire audit period and relied unduly on Norman Tillman, who pointed "the finger at...petitioner as being responsible." It is petitioner's position that Norman Tillman was the officer responsible for any sales tax due.

In contrast, the Division of Taxation asserts that it used a method reasonably calculated to estimate the taxes due because Walt's Sandwiches did not have adequate books and records. Petitioner failed to show by clear and convincing evidence that the audit method or amount of tax assessed was erroneous.

The Division of Taxation rejects petitioner's contention that he was not a person required to collect sales tax on behalf of Walt's Sandwiches during the period December 1, 1986 through

February 29, 1988. The Division of Taxation emphasized that petitioner owned 32.5% of the corporate stock, worked at the corporate premises on a daily basis, regularly picked up sales receipts from the sandwich shops and assisted in preparing bank deposits, received the same salary during the audit period, signed corporate checks using his title as president and believed that he "still should have been an officer of the corporation." These factors confirm petitioner's status as a person required to collect tax on behalf of Walt's Sandwiches.

CONCLUSIONS OF LAW

A. Walt's Sandwiches was required to maintain records sufficient to verify all transactions, in a manner suitable to determine the correct amount of sales tax due (Tax Law § 1135[a]; 20 NYCRR 533.2[a]). As noted in Finding of Fact "5", supra, the auditor made two explicit requests that Walt's Sandwiches produce its books and records, including its cash register tapes and sales invoices, for his examination. The failure of Walt's Sandwiches to produce cash register tapes or any other original sales documents, such as guest checks, justified the auditor's determination that the corporation's records were incomplete (see, Oak Beach Inn Corp. v. Wexler, 158 AD2d 785, 551 NYS2d 375; Matter of Oggi Restaurant, Tax Appeals Tribunal, November 30, 1990).

B. When a taxpayer's records are inadequate, the Division of Taxation may select an audit method reasonably calculated to reflect the sales and use taxes due (Tax Law § 1138[a][1]; see, Matter of Grant v. Joseph, 2 NY2d 196, 206, 159 NYS2d 150, 157, cert denied 355 US 869). Under these circumstances, considerable latitude is given to an auditor in estimating sales. It is only necessary that sufficient evidence be produced to demonstrate that a rational basis existed for the auditor's calculations (Matter of Grecian Square v. State Tax Commn., 119 AD2d 948, 501 NYS2d 219). The burden is then placed upon petitioner to show by clear and convincing evidence that "the result of the audit used is unreasonably inaccurate or that the amount of the tax assessed is erroneous" (Matter of Meskouris Bros. v. Chu, 139 AD2d 813, 526 NYS2d 679, 681).

C. As noted in Finding of Fact "6", supra, the discrepancy between the corporation's

Federal income tax returns and sales tax returns resulted from the failure of the corporate taxpayer to include gross sales from its home office on the sales tax returns. The auditor's treatment of the excess sales reported on the Federal returns as additional sales subject to sales tax was therefore reasonable. In Matter of Todaro (Tax Appeals Tribunal, July 25, 1991), the Tribunal expressed concern that discrepancies between Federal and State returns did not justify an estimated audit because the Division of Taxation had failed to make an adequate request for the taxpayer's sales tax records. In contrast, in the matter at hand, the Division of Taxation was authorized to use such audit method because petitioner's records were requested, examined and deemed inadequate.

As noted in Finding of Fact "7", supra, sales subject to sales tax were also increased for exempt sales claimed which were not substantiated. The auditor detailed the exempt sales which were substantiated in his workpapers. Since no evidence was introduced by petitioner to substantiate any other exempt sales, the auditor properly limited exempt sales to those he detailed in his workpapers.

D. Since it is concluded that the assessment was rational, whether petitioner has met his burden of proof to show, by clear and convincing evidence, that the result of the audit was unreasonably inaccurate or that the amount of the tax assessed was erroneous must be addressed. Petitioner did not introduce any evidence that established the inaccuracy of the audit result. His complaint about the auditor's failure to contact him in the course of the audit does not provide a basis for concluding that the audit results were erroneous. Nor did his vague testimony, unsupported by documents or other witnesses, satisfy such burden.⁷

E. Consequently, the issue of whether petitioner is personally liable for the sales tax determined due must be addressed. Tax Law § 1131(1) defines "persons required to collect tax" as including:

⁷Petitioner requested additional time after the hearing to submit an affidavit of attorney Walter J. Breakell III, who was a member of the board of directors of Walt's Sandwiches. No such affidavit was submitted.

"any officer, director or employee of a corporation...who as such officer, director or employee is under a duty to act for such corporation."

F. The determination of whether an individual is a person or officer under duty to act for the corporation is based upon the facts presented (Vogel v. New York State Department of Taxation and Finance, 98 Misc2d 222; Blodnick v. State Tax Commn., supra). The relevant factors include, but are not limited to, the individual's daily involvement in the corporation; the individual's participation and involvement in the financial affairs of the corporation; whether the individual prepared and signed the sales and use tax returns; the individual's authority to draft checks on the firm's bank account; and in the case of a closely held corporation, the individual's knowledge of the affairs of the firm and the firm's profits." (Matter of Stern, Tax Appeals Tribunal, September 1, 1988.)

Application of these factors in this case indicates that petitioner was involved in the business operation of Walt's Sandwiches on a daily basis. The period at issue does not include the eight sales tax quarters, also audited, during which petitioner was excluded from the business premises. Petitioner, as a minority shareholder at odds with his brother, the majority shareholder, nonetheless "bit and clawed and scratched in order to keep [his position] as president" of Walt's Sandwiches. As noted by the Division of Taxation, petitioner regularly picked up sales receipts from the sandwich shops and assisted in preparing bank deposits, signed corporate checks in

payment of sales tax using his title as president, and received the same salary during the audit period.

G. Petitioner has attempted to minimize his responsibility by arguing that his brother, Dominic Basile, and Norman Tillman were really in control of the corporation and its operations. However, given the fact that no documents or other testimony were offered to support petitioner's position, I cannot give Mr. Basile's testimony much weight, especially in light of its equivocal nature. As noted in Finding of Fact "13", supra, petitioner's initial response concerning his duties was unsettling in its vagueness: "Things that I did previous to that were taken away from me." His testimony concerning the signing of corporate checks was not forthright. He testified first that he did not authorize the use of a signature stamp for the March, April, May and June 1987 checks in payment of sales tax and "tried to get that stamp

back and I still don't have it." But then, he signed the checks in payment of sales tax for July and September 1987. His explanation that "no one else was available" was unconvincing. In short, there is sufficient evidence in the record to conclude that petitioner was a person or officer under a duty to act for Walt's Sandwiches during the period at issue herein, which consists of only five sales tax quarters of the 13 actually audited.

H. In order for "penalty and interest to be abated the burden is upon the taxpayer to show that the failure to comply with the law was due to reasonable cause and not due to willful neglect" (Matter of Disanco Home Center Corp. and Carmen Santora, as Officer, Tax Appeals Tribunal, February 16, 1989). As in Santora (supra), petitioner herein offered no evidence to prove the existence of reasonable cause and the lack of willful neglect and, as a result, the imposition of penalty and interest is sustained.

I. The petition of Joseph N. Basile, officer of Walt's Submarine Sandwiches, Inc., is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated September 11, 1990 is sustained.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE

APPENDIX A

Quarter Ended	Gross Sales Taxable Per Sales Sales Tax <u>Returns</u> <u>Reported</u>	Additional Gross Sales Additional Per Federal Taxable Returns Sales	Total Total Gross Sales Additional Tax Per <u>Quarter</u> Due on Sales	Exempt Sales <u>Substantiated</u>	Total Taxable Sales
2/28/87	\$463,090	\$ 7,056	\$470,146	\$1,815	
\$468,331	\$447,388	\$20,943	\$1,384		
5/31/87	512,079	7,056	519,135	1,963	517,172
	481,949	35,223	2,329		
8/31/87	535,514	7,056	542,570	385	542,185
512,402	29,783	1,969			
11/30/87	466,772	7,056	473,828	3,631	470,197
	448,605	21,592	1,427		
2/29/88	403,002	10,726	413,728	2,128	411,600
	386,931	24,669	<u>1,634</u>		
Additional Tax Due on Sales \$8,743					Total